

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
BEAUMONT DIVISION**

CARGILL INCORPORATED	§	
Plaintiff,	§	
	§	
v.	§	C.A. NO. _____
	§	Admiralty Rule 9(h)
M/T ACTIVE,	§	
her engines, tackle, boilers, etc. <i>in rem</i> ,	§	
	§	
v.	§	
	§	
CAPITAL SHIP MANAGEMENT CORP,	§	
and ISIODOS PRODUCT CARRIER SA	§	
Defendants	§	

COMPLAINT

1. Plaintiff, CARGILL INCORPORATED (“CARGILL”) by its attorneys, Hill Rivkins LLP, complaining of the M/T Active, *in rem*, CAPITAL SHIP MANAGEMENT CORP, (“CSMC”) and ISIODOS PRODUCT CARRIER SA (“IPC”) (collectively “Defendants”), alleges upon information and belief:

A.

2. This is an admiralty or maritime claim within the meaning of 28 U.S.C. § 1333 and Rule 9(h) of the Federal Rules of Civil Procedure, or is brought pursuant to 9 U.S.C.A. § 8, for preservation of *in rem* security for arbitration.

B.

3. At and during all the times hereinafter mentioned, CARGILL was the consignee and owner of the cargo in question and brings this action on its own behalf and on behalf of all who

may become interested in the cargo. CARGILL had and now has the legal status and principal office and place of business stated in Schedule A attached.

C.

4. At and during all the times hereinafter mentioned, CSMC and IPC had and now have the legal status and offices and places of business stated in Schedule A. They were, and now are, engaged in business as common carriers of merchandise by water for hire, and owned, operated, managed, chartered and controlled the above-named vessel which was within the jurisdiction of this Court during its discharge of the cargo at issue.

D.

5. On or about October 9, 2016, at the port of Dumai, Indonesia, the M/T ACTIVE and defendants CSMC and IPC received, in good order and condition, the shipment described in Schedule A, which the vessel and defendants CSMC and IPC accepted and agreed to transport for certain consideration to the Port of Savannah, Georgia.

E.

6. Thereafter, the vessel arrived at the Port of Savannah, Georgia, where the cargo was found to be off-specification and/or contaminated, causing monetary damages to Plaintiff as enumerated herein. On information and belief, the vessel and defendants CSMC and IPC breached, failed and violated their duties and obligations as common carriers and were otherwise at fault.

F.

7. Plaintiff further alleges, in the alternative and without waiving the above cause of action, that all defendants were bailees of plaintiff's cargo described in Schedule A. Defendants delivered the cargo described in Schedule A in a damaged condition which did not exist at the

time of plaintiff's/bailor's delivery to the bailees as described in Schedule A. Defendants breached their duties and obligations as bailees and were negligent.

G.

8. Plaintiff was the shipper, consignee and/or owner of the shipment and brings this action on its own behalf and, as agent and trustee, on behalf of and for the interest of all parties who may be or become interested in the shipment, as their respective interests may ultimately appear, and plaintiff is entitled to maintain this action.

H.

9. Plaintiff has duly performed all duties and obligations on its part to be performed.

I.

10. By reason of the above-stated premises, plaintiff has sustained damages, as nearly as same can now be estimated, no part of which has been paid although duly demanded, in the amount of NINE MILLION EIGHT HUNDRED THOUSAND AND 00/100 DOLLARS (\$9,800,000.00) for which Plaintiff demands recovery from all defendants, jointly and severally.

J.

11. All and singular the premises are true and within the admiralty, maritime, and pendent jurisdiction of the United States and of this Honorable Court.

Wherefore, Plaintiff prays:

1. That summons in due form of law may issue against defendants;
2. That a judgment may be entered in favor of plaintiff against defendants, one or more of them, for the amount of plaintiff's damages together with interest and the costs and disbursements of this action;

3. That process in due form of law according to the practice of this court in causes of admiralty or maritime jurisdiction may issue against said the vessel, her engines, etc., and that all persons having or claiming any interest therein be cited to appear and answer under oath all and singular the matters stated, and this court will be pleased to pronounce a judgment in favor of plaintiff for damages together with interest, costs and disbursements, and the motor vessel may be condemned and sold to pay therefor; and

4. That this court will grant to plaintiff such other and further relief as may be just and proper.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Dana K. Martin', is written over a horizontal line.

DANA K. MARTIN

SDTX I.D. No.: 126

Texas Bar No.: 13057830

DANIELA OLIVEIRA

SDTX I.D. No.: 1314516

Texas Bar No.: 24075837

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**ATTORNEYS FOR PLAINTIFF
CARGILL INCORPORATED**

VERIFICATION

THE STATE OF TEXAS *
 *
COUNTY OF HARRIS *

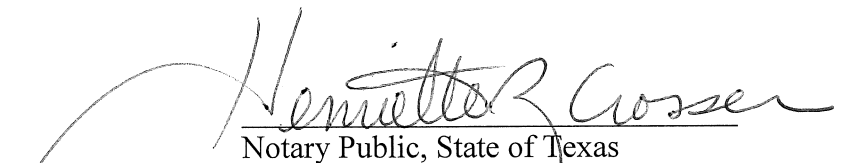
Dana K. Martin, being duly sworn, deposes and says:

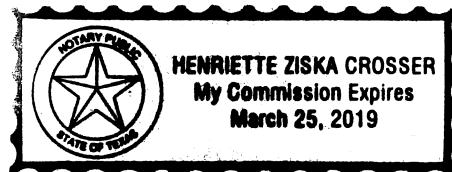
I am an attorney and member of the firm of Hill Rivkins LLP, attorneys for Plaintiff. I am over twenty-one (21) years of age and fully competent to make this Verification. I have read the foregoing Complaint and know its contents. The Complaint is true to my knowledge, except as to the matters stated in the Complaint to be based on information and belief, and as to those matters, I believe them to be true.

The source of my information and the grounds for my belief as to those matters stated in the Complaint, to be alleged on information and belief, are documents and records in my files.


Dana K. Martin

Subscribed and sworn to before me, the undersigned authority, this 16th day of December, 2016.


Notary Public, State of Texas
My Commission Expires: March 25, 2019



SCHEDULE A

LEGAL STATUS AND PLACE OF BUSINESS OF PARTIES

Plaintiff, **CARGILL INCORPORATED** was and now is a Minnesota corporation with a headquarters located in Minneapolis, Minnesota.

M/T ACTIVE was at all material times a general cargo ship sailing under the Liberian flag. The vessel was built in 2015, its call sign is D5GZ7, and its gross tonnage is 29,770 tons.

Defendant, **CAPITAL SHIP MANAGEMENT CORP**, was and now is a foreign corporation, or similar entity, with power to sue and be sued, which regularly does business in Texas and/or the United States as a common carrier of goods, which does not maintain a designated agent on whom service may be made in Texas, and thus may be served through Hague Convention Service, F.R.C.P. 4(k)2, or through the Secretary of State of Texas under the Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code § 17.044 et. seq., in care of its home office at:

3, Iasonos Street, 185 37 Piraeus, Greece.

Defendant, **ISIADOS PRODUCT CARRIER SA**, was and now is a foreign corporation, or similar entity, with power to sue and be sued, which regularly does business in Texas and/or the United States as a common carrier of goods, which does not maintain a designated agent in Texas upon whom service may be made, and thus may be served through Hague Convention Service, F.R.C.P. 4(k)2, or through the Secretary of State of Texas under Texas Long-Arm Statute, Tex. Civ. Prac. & Rem. Code § 17.044 et. seq., in care of its home offices:

c/o Capital Ship Management Corp, 3, Iasonos Street, 185 37 Piraeus, Greece.

DESCRIPTION OF SHIPMENT

Vessel:	M/T Active
Date of Shipment:	October 9, 2016
Port of Shipment:	Dumai, Indonesia
Port of Discharge:	Savannah, Georgia
Shipper:	PT. Nagamas Palmoil Lestari
Consignee:	CARGILL INCORPORATED
Description of Shipment:	RBD Palm Kernel Oil (Traceable), In Bulk
Nature of Loss or Damage:	Off-Specification and/or contaminated
Amount:	\$9,800,000.00